IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 217 OF 2005

Valmik Bandu Nigal. ... Appellant.

Versus.

Sanjay Bandu Nigal & anr. ... Respondents.

Shri Z.M.Avhad for the Appellant.

Shri G.S.Godbole for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 28th March, 2005.

P.C.:

1. The learned Counsel appearing for the Respondent No.1 states that the final arguments in the suit are already over and the suit is now fixed for pronouncement of judgment. The learned Counsel appearing for the Appellant disputes the said statement and states that the final argument in the suit is yet to be heard.

2. The learned Counsel for the Respondent No.1 states that the Appeal is not maintainable as prayers made in the Applications at Exh.304 and 312 were not covered by the Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908.

3. I am not entertaining this Appeal only on the ground that now the suit has admittedly reached the stage of final hearing and recording of evidence is complete. In case the decree passed in the suit is against the

Appellant, he can always challenge the impugned Judgment and order in an Appeal which may be preferred against the decree passed in the suit. Subject to the observation made above, the Appeal is dismissed with no order as to costs.

Judge.